

Notice of Allowability

Application No.

09/552,586

Examiner

Victor K. Hwang

Applicant(s)

KOCHMAN ET AL.

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE and amendment filed No. 15, 2004.
2. ☒ The allowed claim(s) is/are 53-66 and 68-71.
3. ☒ The drawings filed on 19 April 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

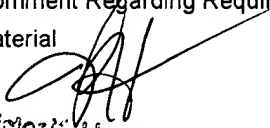
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 20041122
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20050307.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


Victor K. Hwang
Patent Examiner

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Morey B, Wildes on March 07, 2005.

2. The application has been amended as follows:

In the Claims:

A) Cancel claim 67.

B) Amend claim 53 as follows:

--53. (Amended) A method for reducing effects on appearance of a region of a person's skin resulting from cellulite tissue deposits underlying the skin region, comprising:

providing an apparatus for treating cellulite tissue underlying a skin region comprising:

a housing,

a vacuum element that generates a negative pressure region within said housing,

said negative pressure region being operative to draw the region of skin and the

underlying cellulite tissue towards said housing when said apparatus is applied to the skin region,

at least one tissue manipulating element positioned within said housing and

extending from said housing so that said at least one tissue manipulating element is

positioned to stress and mobilize the skin region and the underlying cellulite tissue when said apparatus is used to massage the skin region, and

a radiant heat source mounted to said housing that provides radiant heat operative to heat the cellulite tissue when said apparatus is applied to the skin region; drawing the region of skin and the underlying cellulite tissue towards said housing using said vacuum element;

applying radiant heat from said radiant heat source to the skin region such that the radiant heat substantially passes through the skin and heats the underlying cellulite tissue;

the step of applying radiant heat comprising applying to the skin region, light having a wavelength in the range of 600 nm to 1500 nm; and

homogenizing the cellulite tissue underlying the skin region by stressing and mobilizing the skin region and the underlying cellulite tissue by using said at least one tissue manipulating element to massage the skin region.--

3. The following is an examiner's statement of reasons for allowance: the prior art of record does not disclose applying radiant heat with a wavelength in the range of 600 nm to 1500 nm in conjunction with a tissue manipulating element used to homogenize the cellulite tissue underlying the skin region by stressing and mobilizing the skin region and underlying cellulite tissue.

Ramey et al. is the only reference found to teach the application of heat, vacuum and tissue manipulation to treat cellulite, but is silent as to the wavelength of heat used. Heat packs, heat lamps, integral heat sources, or the prior heating of the tissue manipulating element

is taught [0059]. Also, the tissue manipulating element does not extend from the housing.

Various other devices teach the use of vacuum and tissue manipulation or tissue manipulation and heat to treat cellulite.

Though *Cheng'159* teaches a heat source within the claimed wavelength range, the heat is used to treat muscles and therefore it is not clear that the heat source heats the underlying cellulite skin while passing through the skin. It could be that the heat source of *Cheng'159* heats the skin, the underlying cellulite, and the muscles or it could be that only the muscles are heated, while the skin and underlying cellulite are not affected.

Altshuler et al. '080 teaches a heat source providing heat within the claimed wavelength for selective heating of lipid-rich tissue, understood by the Examiner to possibly include cellulite tissue. A pinched-fold technique is disclosed (Fig. 2B and col. 13, lines 35-49) to apply the light energy and includes the use of a vacuum to draw the skin into a folded configuration but there is no teaching of stressing and mobilizing the skin region and the underlying cellulite tissue using a tissue manipulating element to massage the skin region and there is no teaching of heating the cellulite tissue in conjunction with homogenizing the cellulite tissue by using the tissue manipulator.

In view of the above, there is no teaching or disclosure to target cellulite tissue with the heat source providing heat/light within the wavelength of 600nm to 1500 nm and manipulating the tissue with a tissue manipulator and applying a negative pressure to the target skin region, with an apparatus as claimed providing each of these steps.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the

issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

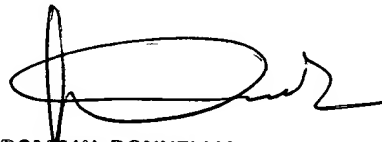
The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
March 7, 2005



JEROME W. DONNELLY
PRIMARY EXAMINER